



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Maria R. Nold  
Regional Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
PRODUCTIVE ENGINEERING SYSTEMS, INC.  
FOR  
AMERICAN STRIPPING COMPANY  
Registration No. 61365**

## **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and PRODUCTIVE ENGINEERING SYSTEMS, INC., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

## **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “ASCO” or “American Stripping Company” means PRODUCTIVE ENGINEERING SYSTEMS, INC. d/b/a American Stripping Company, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. ASCO is a “person” within the meaning of Va. Code § 10.1-1300.
2. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. “Facility” means American Stripping Company located at 5736 Sellger Drive in Norfolk, Virginia, a performance coating and painting facility.
5. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
6. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the Virginia Air Pollution Control Law.
7. “Permit” means the New Source Review Stationary Source air permit issued December 18, 2012 under Air Registration No. 61365 to modify and operate a blasting and surface coating facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to American Stripping Company.
8. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” means 9 VAC 5 Chapters 10 through 80.
9. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
10. “Va. Code” means the Code of Virginia (1950), as amended.
11. “VAC” means the Virginia Administrative Code.
12. “Virginia Air Pollution Control Law” means Chapter 13 (§ 10.1-1300 *et seq.*), of Title 10.1 of the Va. Code.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. ASCO owns and operates the Facility located at 5736 Sellger Drive in Norfolk, Virginia. The Facility is a performance coating and painting facility. The Facility is the subject of the Permit, which allows ASCO to modify and operate a blasting and surface coating facility.
2. In response to a complaint filed on May 18, 2016 pertaining to fugitive dust leaving the Facility, Department staff performed a full compliance evaluation on May 26, 2016. Based on this investigation, Department staff made the following observations:
  - a. An ASCO employee was using an air hose to blow excess blasting grit off floors and equipment in the abrasive blasting booth out of the warehouse door into the outside environment in an effort to “clean” the Facility. This caused a plume of fugitive dust to form and migrate to neighboring properties.

- b. ASCO had built a new structure where painting operations were taking place. According to DEQ records, an air permit had not been issued for this new structure.
  - c. Permit-listed single paint booth 002B had been separated into two paint booths. According to DEQ records, an air permit had not been issued for the new (separated) paint booth where painting operations were taking place.
  - d. Powder coating booth 001C and paint booth 002B were not fully enclosed as required by the Permit; both booths were three-sided with fabric filters (not the Permit-listed dry-type particulate filters).
  - e. ASCO did not have available for review records (logs) of monthly and annual hours for blasting operations conducted in abrasive blasting room 001BR, monthly and annual VOC emission calculations, and visible emissions observations conducted and any visible emissions evaluation (VEE) performed using EPA Method 9.
  - f. ASCO did not have available for review a copy of the Facility's December 18, 2012 permit.
  - g. DEQ also did not find notification of construction, anticipated date of initial startup, or actual date of initial startup of the new paint operations structure, or startup of the new (separated) paint booth constructed from 002B. Nor did DEQ find an initial notification of startup for the Facility.
3. 9 VAC 5-50-90 states, "During the construction, modification, or operation phase of a stationary source or any other building, structure, facility, or installation, no owner or other person shall cause or permit any materials or property to be handled, transported, stored, used, constructed, altered, repaired or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne."
4. 9 VAC 5-80-1120(A) states, "No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source."
5. 9 VAC 5-80-1210 (E) states, "Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section."

6. 9 VAC 5-50-50(A) requires that any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the Board for the date of commencement of construction, initial startup, and actual date of startup.
7. Condition 3 of the Permit states, "Particulate emissions from the overspray in the dry powder coating booth shall be controlled by full enclosure and use of dry-type particulate filters. All booth doors shall remain closed during periods when spraying operations are being performed in the booth."
8. Condition 4 of the Permit states, "Particulate emissions from the sprayed surface coating applications performed in each of the spray booths shall be controlled by full enclosure and use of dry-type particulate filters. All booth doors shall remain closed during periods when surface spraying operations are being performed in the spray booth."
9. Condition 9 of the Permit states, "Compliance shall be demonstrated by keeping a record log of the hourly abrasive blasting performed."
10. Condition 15 of the Permit requires that the Permittee shall record details of the visual observations, VEEs, and any corrective actions in a record log. The record log shall include the name of the observer, the date and time of any corrective actions taken whenever visible emissions are observed.
11. Condition 17 of the Permit requires the permittee to maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit, including monthly and annual hours for blasting operations conducted in abrasive blasting room 001BR, monthly and annual VOC emissions calculations, and visible emissions observations and any VEE performed using EPA Method 9.
12. Condition 9, Condition 15, and Condition 17 of the Permit requires that records be available for inspection by DEQ and current for the most recent five (5) years.
13. Condition 27 of the Permit states, "The permittee shall keep a copy of this permit on the premises of the abrasive blasting and applied surface coating operations facility to which it applies."
14. On June 6, 2016, based on the review and follow-up information, DEQ issued a NOV to ASCO for the violations described in paragraphs C(2) through C(13), above.
15. Based on the results of the May 26, 2016 compliance evaluation, the Board concludes that ASCO has violated 9 VAC 5-50-90, 9 VAC 5-80-1120(A), 9 VAC 5-80-1210 (E), and 9 VAC 5-50-50(A), as well as Conditions 3, 4, 9, 15, 17 and 27 of the Permit, as described in paragraphs C(2) and C(13), above.

16. On September 22, 2016, ASCO submitted an air permit application for the Facility to address modifications observed in the Facility during the May 26, 2016 inspection. ASCO also submitted to DEQ corrective action by letters dated June 13, 2016 and June 27, 2016. Based on these two letters and the air permit application, the violations described in paragraphs C(2) through C(13), above, have been corrected.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1309 and 1316, the Board orders ASCO and ASCO agrees to:

1. Pay a civil charge of \$19,820 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

<u>Payment Due Date</u>	<u>Payment Amount</u>
November 30, 2016	\$5,000
December 30, 2016	\$2,964
January 30, 2016	\$2,964
February 28, 2016	\$2,964
March 30, 2016	\$2,964
April 30, 2016	\$2,964

2. If the Department fails to receive a civil charge payment pursuant to the schedule described in the above paragraphs D.2, the payment shall be deemed late. If any payment is late, the Department shall have the right to demand in writing full payment of the entire remaining balance under this Order by ASCO. ASCO shall pay the entire remaining balance within 15 days of receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under this Order.
3. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

4. ASCO shall include its Federal Employer Identification Number (FEIN) \_\_\_\_\_ with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, ASCO shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of ASCO, for good cause shown by ASCO, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order only, ASCO admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. ASCO consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. ASCO declares it has received fair and due process under the Administrative Process Act, Va. Code and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by ASCO to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. ASCO does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. ASCO shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. ASCO shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ASCO shall notify the DEQ Regional Director

verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours and in writing within three business days, of learning of any condition above, which ASCO intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and ASCO. Nevertheless, ASCO agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - (a) The Director or his designee terminates the Order after ASCO has completed all of the requirements of the Order;
  - (b) ASCO petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - (c) the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to ASCO.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve ASCO from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by ASCO and approved by the Department pursuant to this Order are incorporated

into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of ASCO certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind ASCO to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of ASCO.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, PRODUCTIVE SYSTEMS ENGINEERING, INC. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7 day of November, 2016.

Maria R. Nold  
\_\_\_\_\_  
Maria R. Nold, Regional Director  
Department of Environmental Quality

PRODUCTIVE SYSTEMS ENGINEERING, INC. voluntarily agrees to the issuance of this Order.

Date: \_\_\_\_\_  
By: [Signature] \_\_\_\_\_, [Signature] \_\_\_\_\_  
(Person) (Title)  
PRODUCTIVE SYSTEMS ENGINEERING, INC.

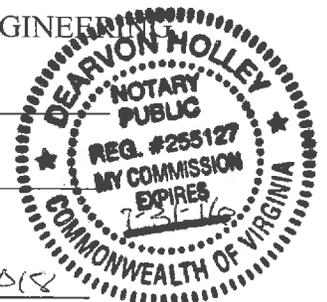
**Commonwealth of Virginia**

City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 4th day of November, 2016, by \_\_\_\_\_, who is

\_\_\_\_\_ of PRODUCTIVE SYSTEMS ENGINEERING, INC. on behalf of the corporation.

Deavon Holley  
\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Registration No.



My commission expires: July 31, 2016  
Notary Seal:

